IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9928 of 2001
with
SPECIAL CIVIL APPLICATION No 9927 and 99411 of 2001
with
SPECIAL CIVIL APPLICATION NO.10098 AND 8223 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SALIMBHAI S GAHA

Versus

G E B

Appearance:

1. Special Civil Application No.9928,9927, 9941 of 2001
MR TUSHAR MEHTA for Petitioner No. 1
MS SP HASURKAR for Respondent No. 1,2-3
MR HD DAVE ASST GOVT PLEADER for Respondent No. 2-3

2. Special Civil Application No.10098 & 8223 of 2001
MR ZF BHARDA for Petitioner No. 1
MR SP HASURMAR for Respondent No. 1
MR HD DAVE ASSTT GOVT PLEADER for Respondent State

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2002

COMMON ORAL JUDGEMENT

#. Since common question is involved in all these petitions, same are heard together and being disposed of by this common judgment.

#. Heard Mr.Devang Vyas, learned advocate for Mr.Tushar Mehta appearing on behalf of the petitioners involved in Special Civil Application Nos. 9928,9927, 9941 of 2001 and Mr.Z.F.Bharad, learned advocate for petitioners involved in Special Civil Application No.10098 & 8223 of 2001 and Mr.S.P.Hasurkar, learned advocate for respondent G.E.Board, so also Mr.H.D.Dave, learned AGP for respondent - State.

Rule. Mr.S.P.Hasurkar, learned advocate for respondent Board and Mr.H.D.Dave, learned AGP for State waive formal service of Rule on behalf of the respective parties.

#. At the beginning of the arguments, Learned advocate Mr.Bharda submits State is necessary party and therefore, seeks permission to join the Director of Employment and Training, Gandhinagar as party respondent because test in question requires to be conducted by the Director. Considering the request, permission sought for is granted to join the Director of Employment and Training, Gandhinagar as party respondent in petitions preferred by learned advocate Mr.Z.F.Bharda. Learned AGP Mr.H.D.Dave appears for respondent State waives formal service on behalf of the newly added party provided Mr.Bharda supplies him a copy of the petitions.

#. Brief facts giving rise to Special Civil Application Nos. 9928,9927, 9941 of 2001 are as under :-

The petitioners belong to OBC category who have undergone course of Wireman. The petitioners worked as Apprentice Lineman from 1994 to 1997 with respondent Gujarat Electricity Board. During the said period the petitioners have undergone necessary training of 52 days in each year in I.T.I. as required by the Apprentices Act, 1961. The petitioners were called by the respondent Board for verification of documents and certificates for the purpose of appointing them on the permanent post of Helper. However, one of the documents which was required to be produced by the petitioners was passing of the Trade Test. As per the information of the petitioners, whenever, an apprentice is appointed on the permanent post, nobody was asked to produce Trade Test Certificate. The petitioners were not aware about such certificate

being produced. Therefore, the petitioners made inquiries with the respondent Board and the petitioners were informed that under one Government Resolution being No.EP / APP / APT / 2000 / 291 dated 13th November, 2000 it was made compulsory to pass Trade Test for getting permanent appointment. However, it is case of the petitioners that they do not have a copy of such Government Resolution. But the grievance of the petitioners that they were not aware and therefore, no opportunity was given to the petitioners to appear at the test and to obtain the certificate. Therefore, the petitioners approached the respondent No.3 with request to permit them to appear in the next apprentice Trade Test as the petitioners have already completed apprenticeship and they are likely to get job on the basis of such certificate and that the petitioner are desperately in need of a job. In response to the communication made by the petitioners, the respondent Board has informed the petitioners to represent their case to the concerned Examination Center where they are supposed to appear for examination i.e. ITI, Bhavnagar. Accordingly, the petitioners approached the Apprentice Advisor, ITI, Bhavnagar to permit them to appear in the Trade Test Examination to enable them to get permanent appointment in the respondent Board. However, no response has been given by the Apprentice Advisor, ITI, Bhavnagar. Thereafter, the petitioner in SCA No.9928 / 2001 received call letter dated 6th February, 2001 wherein trade test certificate is required to be produced by the petitioner for getting permanent appointment. In response, the respondent No.2 informed the petitioners that they may make representation before the respondent No.3. Accordingly, the petitioners have made application to the respondent No.3 in the first week of March, 2001 and 23rd April, 2001. The petitioners again received letter from respondent No.3 wherein it was stated that the petitioners may submit application to the concerned examination center from where they are supposed to appear the examination i.e. respondent No.2. The petitioners accordingly submitted their application to respondent No.2 which is not answered yet. It is also case of the petitioners that on 25th May, 2001 the petitioners have served notice on respondent No.1 stating all the relevant facts but thereafter, same reply was given vide letter dated 2nd June, 2001 by respondent No.1 informing that passing of Trade Test Certificate is made compulsory. Immediately after receiving the said reply the petitioners again approached the respondent Nos.2 & 3 to permit them to appear the examination but the petitioners have not heard anything till date. Thereafter, on 16th July, 2001 again the petitioners wrote a letter to

respondent No.2 to permit them to appear in the examination but the same was not replied. Thereafter, the petitioners continuously made attempts to get permission to appear in the Trade Test Certificate examination, but so far not reply has been given by the respondent No.2

#. So far as Special Civil Application No.10098 & 8223 of 2001 are concerned, according to the case of the petitioners, they have passed Secondary Certificate examination opted for a course in Industrial Training Institute as Electrician wherein some of the petitioners have undergone the training of two years and / or three years and on their completing the aforesaid course the petitioners between the year 1993 and 1998 completed apprenticeship training which is for a period of two years from their date of respective appointments, for the training of apprentice. On completion of two years and three years apprenticeship the petitioners were relieved by way of an order passed b the Deputy Engineer of the concerned department. According to the petitioners, as per the policy adopted by the respondent Board the persons who had completed the apprenticeship training with the Board for two years or three years were being absorbed on the basis of their seniority as and when the vacancy on the post of helpers arose in the Board and all persons similarly situated as the petitioners who had completed the training as apprentice on the vacancy being arisen were absorbed as Helpers in the Board. According to the petitioners, on receiving the letter from the respondent No.2 the petitioner No.1 remained present in the office of the respondent No.2 along with the necessary documents on the respective dates mentioned in the letters but was informed by the Deputy General Manager, Central Zone - respondent No.3 who was present in the office of the respondent No.2 that as he had not appeared and cleared examination for vocation trade test he was not eligible to be appointed as Helper in the respondent Board. According to the petitioners, many orders appointing persons who were juniors to the petitioners in apprentice training have been passed by bypassing the legitimate claim of the petitioners. However, it is case of the petitioners that they were undergoing apprentice training after passing of the vocational trade examination, therefore, it was at all not mandatory or compulsory. In fact, there have been instances wherein persons who had appeared for examination and who have not successfully cleared the examination have been absorbed and appointed as Helpers by the Board.

#. In view of facts narrated above in respect of group of five petitions, the question is that trade test which has been suggested by the respondent Board as per the Circular, is required to be passed by the petitioners. For this purpose, the Director of Employment and Training, Gandhinagar is the concerned authority who can grant permission to the petitioners to appear in the said trade test. Therefore, in such situation, it is directed to the petitioners involved in this group of petitions to approach the Director of Employment and Training, Gandhinagar by way of detailed representation with request to permit them to appear in the Trade Test which is now made compulsory for being appointed in Gujarat Electricity Board. Learned AGP Mr.H.D.Dave for respondent - State Government and the Director of Employment and Training has submitted that considering the Affidavit-in-reply, according to the Rules, if the petitioners are eligible to appear in the said examination, necessary permission will be accorded accordingly. This Court has also noticed that from the affidavit in reply filed on behalf of the respondent, such positive stand is taken by the respondent in respect of this group of petitions.

#. However, considering submissions made by the learned advocates for the parties, it is pertinent to note that the petitioners have satisfactorily completed training with the respondent Board as Apprentice. There is no other lacuna or inefficiency is pointed out in respect of completion of their training by the respondent Board. But the only difficulty which comes in the way is, the petitioners have not cleared vocational trade test which is now made compulsory pursuant to the Government Resolution dated 13th November, 2000 for being appointed on the permanent post in question in G.E. Board. However, fact remains that such technical objection is raised by the respondent No.3 as it is not permissible under the Rules because within three years from completion of the training, the apprentice has to appear in the said examination. It is also observed that according to the Rules, they are not eligible and permissible to give sanction to appear in the said examination. But fact remains that because of this technical aspect, the petitioners who have completed their training satisfactorily, are still remained without job in the respondent Board. Therefore, considering overall facts and circumstances of the case, according to my opinion, in the event of representation which will be filed by the petitioners, the Director of Employment and Training, Gandhinagar requires to be directed to consider such representation accordingly. Therefore, in the event

of filing of such representation by the petitioners as discussed above, the Director of Employment and Training, Gandhinagar is directed to consider such representation of the petitioners in accordance with rule and if necessity so arise, he may exercise his discretionary powers to relax certain conditions in respect of the petitioner for granting them permission to appear in the trade test concerned, without raising such technical aspect and to pass appropriate orders within period of two months from the date of receiving such representation of the petitioners along with this order.
However, it is observed that in case of any adverse orders, it is open to the petitioners to challenge the same before appropriate forum in accordance with law.

In view of above observations and directions, all these five petitions stand disposed of accordingly. Rule in each petition stands discharged. No order as to costs. Direct Service is permitted.

Date : 1-4-2002 [H.K.Rathod, J.]
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